

Exhibit B

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X Docket#  
ALLEN STEIN, AS TRUSTEE OF : 11-cv-6009 (DLI) (JO)  
THE RACHEL MEISELS :  
IRREVOCABLE TRUST 2006B, :  
Plaintiff, :  
: - versus - : U.S. Courthouse  
: Brooklyn, New York  
AMERICAN GENERAL LIFE :  
INSURANCE COMPANY, : August 29, 2012  
Defendant :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff:

Ira Lipsius, Esq.  
Lipsius-BenHaim Law, LLP  
82-02 Kew Gardens Rd.  
Ste. 1030  
Kew Gardens, NY 11415

For the Defendant:

Robert P. Lesko, Esq.  
Wilson Elser Moskowitz  
Edelman & Dicker  
200 Campus Drive  
Florham Park, NJ 07932

Transcription Service:

Transcriptions Plus II, Inc.  
740 Sharon Road  
Copiague, New York 11726  
Transcriptions2@verizon.net

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

Proceedings

2

1 THE COURT: We're on the record in Stein v.  
2 American General Life Insurance Company, docket number  
3 11-cv-6009.

4 We have Mr. Lipsius for the plaintiff and  
5 Mr. Lesko for the defendant. They're calling from a  
6 deposition and gentlemen, I understand you have a  
7 dispute.

8 Before we'd gone on the record, one of you told  
9 me that you anticipate a read back of five to seven  
10 minutes. I sincerely hope that between the two of you,  
11 you can get me up to speed on the issue in dispute  
12 without having to burden the record with that long a read  
13 back but let's see. Can somebody tell me what the  
14 problem is?

15 MR. LIPSIUS: I'll start off with the question  
16 -- I asked the witness if she saw the 30(b)(6) notice.  
17 It's a 30(b)(6) deposition. And then I asked where --  
18 when she saw it or the exact words -- and it was told --  
19 and the objection was attorney/client privilege as to her  
20 even review of the 30(b)(6) notice and then everything,  
21 every question asked and none of it related to any of  
22 what I believe is privileged communications but as to  
23 what she did to prepare for this deposition, time, who  
24 she met with et cetera, and everything was raised -- and  
25 everything was objected to with an attorney/client

Proceedings

3

1 privilege objection.

2 THE COURT: Mr. Lesko, in --

3 MR. LESKO: Your Honor, I disagree one hundred  
4 percent with what Mr. Lipsius just read or just said.  
5 And it may require your Honor to consider some of the  
6 record but let me just say this. The witness did answer  
7 yes to the question, did you review the 30(b)(6) notice.  
8 Mr. Lipsius said when and I instructed the witness that  
9 to the extent that would disclose attorney/client  
10 communication, or work product privilege, i.e., when we  
11 were preparing yesterday, that she should so indicate and  
12 not answer.

13 As for preparation for the deposition, to the  
14 extent the preparation consisted of me showing her  
15 documents and us discussing them, or even the documents  
16 that I chose to show her, that's work product and  
17 attorney/client privilege. And --

18 THE COURT: All right. Can I ask --

19 MR. LESKO: As for other preparation --

20 THE COURT: -- a question?

21 MR. LESKO: Just one moment, your Honor, just  
22 one more thing I can add to that which is very  
23 instructive. As to other preparation or communications  
24 with people who are not attorneys, the witness answered  
25 at length and she disclosed the manager of

## Proceedings

4

1 reinstatements, Alyssa Stokes (ph.), the manager of  
2 direct payments, Janet Pflegal (ph.), the director of  
3 mail services, Frank Vallis (ph.) and the business  
4 analyst, Tamiko Stewart (ph.). So, Mr. Lipsius is  
5 incorrect in suggesting that we -- that I instructed her  
6 not to answer.

7 THE COURT: All right. Folks, let me ask you  
8 this. Will it work for both sides if the following forms  
9 of question are permitted: (a) identifying things that  
10 have been reviewed, whatever documents Mr. Lipsius wants  
11 to talk about and (b) as to any such document that was  
12 reviewed, did you review it before yesterday and if so,  
13 when.

14 Is that a problem for you, Mr. Lesko?

15 MR. LESKO: No, your Honor. If Mr. Lipsius  
16 presents a document and asks if she reviewed it, she can  
17 answer that question.

18 THE COURT: And if she -- and if the follow-up  
19 question is when before yesterday, if ever, did you  
20 review that document, she can answer that?

21 MR. LESKO: Well, if she reviewed it and she  
22 said she never reviewed it before yesterday, then she is  
23 saying in effect she reviewed it yesterday with counsel  
24 which discloses that I gave it to her.

25 THE COURT: That's -- you're right. That's the

Proceedings

5

1 inference to be drawn but I take it, you know, it's fair  
2 to ask for example, did you review it the day before  
3 yesterday? Did you review it two days before that?

4 MR. LESKO: Well, yes, your Honor --

5 THE COURT: So --

6 MR. LESKO: -- but clearly as you noted that --

7 THE COURT: Right.

8 MR. LESKO: -- if the follow-up question is  
9 asked, did you ever review it and she never reviewed it  
10 before yesterday and we prepared yesterday, then we're  
11 disclosing attorney/client privilege and work product.

12 THE COURT: I --

13 MR. LESKO: And the bottom line is what's --  
14 why? What's the point?

15 THE COURT: Well (indiscernible).

16 (Cross-talk)

17 MR. LESKO: (Indiscernible) the substantive  
18 question.

19 MR. LIPSIUS: Your Honor, let me --

20 MR. LESKO: (Indiscernible).

21 THE COURT: Excuse me. Sorry, folks. Sorry.

22 May I --

23 MR. LIPSIUS: Your Honor, please --

24 THE COURT: Excuse me, let me just get  
25 something in here. Folks, look I understand, Mr. Lesko

## Proceedings

6

1 that sometimes the assertion of a privilege and the  
2 inability to assert it other circumstances can allow the  
3 inference that serves to disclose what you'd rather not  
4 but I don't know that it's an improper question (a) to  
5 ask whether the witness has reviewed a certain document  
6 or (b) to ask whether outside of when and whether,  
7 outside of consultations with you or others on the  
8 defense team, she reviewed it.

9 MR. LESKO: Well I have a proposal in that  
10 regard, your Honor. If Mr. Lipsius asks did you review  
11 this document and she said yes, that's it.

12 THE COURT: No.

13 MR. LESKO: And it's not disclosing --

14 THE COURT: No, sir. I disagree with that.

15 MR. LIPSIUS: Your Honor, the other question  
16 that becomes quite important to me is what documents she  
17 reviewed and in fact, he's instructed the witness to not  
18 reveal any document reviewed that was shown by counsel  
19 and I don't think under the federal rules, there's --  
20 that's a valid objection. I have a right to know every  
21 document she reviewed, no matter who showed it to her.

22 MR. LESKO: Well there again, we can come to a  
23 compromise if you ask her if she reviewed a document and  
24 she says yes, but you cannot ask whether she reviewed it  
25 with counsel or prior to counsel, and then you know what

Proceedings

7

1 documents she reviewed.

2 THE COURT: No, I think --

3 MR. LIPSIUS: I don't know what documents she  
4 reviewed, your Honor, unless I am told exactly. And I  
5 don't believe any of that is privileged. I've been  
6 practicing for many years and I have always been under  
7 the impression and I seen this as I've researched it many  
8 years ago, and I have a right to ask any document  
9 reviewed period, whether reviewed with counsel, handed to  
10 counsel. There's no privilege as to what document a  
11 person reviews.

12 THE COURT: The question what documents did you  
13 review, I believe does not call for privileged  
14 information.

15 MR. LESKO: Agreed.

16 THE COURT: Okay. So --

17 MR. LESKO: My --

18 THE COURT: Mr. Lipsius -- excuse me.  
19 Mr. Lipsius can ask the witness to identify all documents  
20 she reviewed. As to any document reviewed, he can ask  
21 about the circumstances and timing of the review, carving  
22 out anything, you know, that occurred as part of the  
23 preparation with counsel. Does that give you folks  
24 sufficient guidance to go forward with the deposition?

25 MR. LESKO: Your Honor, that does give guidance



## Proceedings

8

1 but I would like an opportunity to brief it because I am  
2 very certain that I am correct about this privilege  
3 question. And we would like to brief -- to protect the  
4 privilege.

5 THE COURT: Well, look, the rule certainly  
6 gives you the ability to direct the witness not to answer  
7 a specific question. You're going to do it question-by-  
8 question, I think. As to any particular question, you  
9 can direct the witness not to answer to preserve for  
10 later litigation an assertion of privilege.

11 That said, you know, one of the possible  
12 outcomes will be if you forestall -- you know, direct the  
13 witness not to answer now and the witness is directed to  
14 answer later, your client will bear the costs of the  
15 follow-up deposition.

16 MR. LESKO: Well, I understand it's a possible  
17 outcome, your Honor. I don't agree that that's the  
18 appropriate outcome but we'll be guided by that.

19 THE COURT: Well, to the extent that --

20 MR. LESKO: I feel that (indiscernible) --

21 THE COURT: Mr. Lipsius -- I'm sorry, Mr.  
22 Lesko, to the extent that I am giving you a ruling now,  
23 that is the ruling. If you choose nevertheless to direct  
24 your client or the witness not to answer, I just don't  
25 want you to be surprised if that's going to be the result

Proceedings

9

1 that, you know --

2 MR. LESKO: I understand, your Honor.

3 THE COURT: -- that if I adhere to the ruling  
4 and require the witness to answer, you know, your client  
5 will bear the cost of that.

6 MR. LESKO: Well, your Honor, you indicated  
7 that you'll make those rulings on a question-by-question  
8 basis.

9 THE COURT: No, I'm not going to make the  
10 rulings on a question-by-question basis today. You're  
11 not going to call up with every question.

12 MR. LESKO: I understand.

13 THE COURT: Yes, okay.

14 MR. LESKO: I understand that.

15 THE COURT: Right.

16 MR. LESKO: But I feel as counsel, my ethical  
17 duty is to preserve this privilege.

18 THE COURT: Sure.

19 MR. LESKO: And that's what I am going to need  
20 to do.

21 THE COURT: Okay. You're preserving a  
22 privilege that as described thus far, I believe is not  
23 properly asserted and to me that's the important thing to  
24 keep in mind that you're already getting a ruling.

25 MR. LESKO: Understood, your Honor, but your

Proceedings

10

1 Honor's not making the ruling on a complete record. So I  
2 think we need to present the complete record.

3 THE COURT: But what more complete record do  
4 you want me to hear?

5 MR. LESKO: Well, we don't know all the  
6 questions yet that counsel is going to ask. If -- your  
7 Honor indicated that the Court's not prepared to do a  
8 question-by-question ruling today and I agree that would  
9 be a waste of everybody's time in this room, so upon  
10 completion of today's session, if Mr. Lipsius wants to  
11 move to compel, we'll oppose and then we'll act in  
12 accordance with your Honor's --

13 THE COURT: Okay, but --

14 MR. LESKO: -- we'll act appropriate  
15 (indiscernible).

16 THE COURT: -- you know, I don't think every  
17 issue needs question-by-question rulings. I'm telling  
18 you as a ruling now, as a general matter, to the extent  
19 the questions seek to have the witness identify all  
20 documents reviewed and as to any document reviewed the  
21 timing and circumstances of the review with the exception  
22 of review by -- you know, in consultation with counsel,  
23 that question should and much be answered.

24 MR. LESKO: Okay. Your Honor and what I am  
25 saying, I understand that and I appreciate the Court's

Proceedings

11

1 direction. I agree that to the extent the question is  
2 asked, what was reviewed can be answered. But if the  
3 follow-up question as to when it was reviewed, the answer  
4 will reveal attorney/client communication or privilege,  
5 then I intend to instruct the witness not to answer to  
6 preserve (indiscernible).

7 THE COURT: All right. But that is in  
8 contravention of my order. I just want that to be clear.  
9 If the question --

10 MR. LESKO: I understand.

11 THE COURT: If the question is when did you  
12 review it but don't tell me in answering that question  
13 any communications with counsel or don't tell me when you  
14 reviewed it with counsel but any other time that you  
15 reviewed it, if that is the nature of the question, it  
16 must be answered. That is the ruling. So you're not --  
17 at this point, you wouldn't be preserving an objection or  
18 an assertion of privilege for review by me.

19 MR. LESKO: Your Honor, I understand that and I  
20 respectfully disagree because if I allow the answer now  
21 to that prior to seeking review of that ruling, then I  
22 will have waived or the witness will have waived the  
23 privilege making any appeal moot.

24 So I feel like -- and I will -- you know, we're  
25 on the phone here on our feet. I'm going to take a

Proceedings

12

1 minute or two to consider this and discuss it with my  
2 client.

3 THE COURT: I hope so.

4

5 MR. LESKO: I will.

6 THE COURT: Yes.

7 MR. LESKO: I will.

8 MR. LIPSIUS: Now there's another -- the next  
9 objection which it all goes to attorney/client, is the  
10 witness advised, I think before counsel raised objection  
11 that in preparation she had spoken to people within the  
12 legal department of American General, AIG, and I asked  
13 for those names to be identified. I believe there was an  
14 objection to that, as well and I believe I have a right  
15 to have the names of the people that she met with in  
16 preparation, even if they are attorneys within the  
17 company.

18 MR. LESKO: The record will reflect that she  
19 said no in response to that question, so she didn't. And  
20 even if she did, the communications are privileged.

21 MR. LIPSIUS: I don't believe identification of  
22 the party is privileged, your Honor.

23 THE COURT: Meeting with counsel, don't ask  
24 about meetings with counsel but it sounds like it's a  
25 moot issue. She says she didn't meet with any attorneys.

Proceedings

13

1 MR. LESKO: In the legal department.

2 MR. LIPSIUS: Could you check the record on  
3 that one second, the reporter is here --

4 THE COURT: Wait. We've got the witness there.

5

6 MR. LIPSIUS: Yes.

7 THE COURT: Is the witness there?

8 MR. LESKO: Yes.

9 MS. SUTTON: Yes.

10 THE COURT: What's your name, ma'am?

11 MS. SUTTON: Debbie Sutton (ph.).

12 THE COURT: Okay. Did you meet with any  
13 attorneys in the legal department?

14 MS. SUTTON: No.

15 MR. LESKO: Sorry -- okay.

16 THE COURT: That's the answer.

17 MR. LESKO: Thank you.

18 THE COURT: Okay. Anything else?

19 MR. LIPSIUS: Not at this time. I hope we  
20 won't have to come back again. Thank you.

21 THE COURT: All right. Well, look, if you have  
22 an issue that needs a ruling, I'll certainly give it to  
23 you. I do urge you folks to do as much as you can  
24 without getting a ruling so that if there's going to be  
25 more than one issue, you know, we save it all up for the

Proceedings

14

1 end and maybe as you progress you'll find that something  
2 that was in dispute has resolved itself along the way.  
3 But certainly if you need a ruling, I'm here to give it.

4 MR. LESKO: Thank you, your Honor. We  
5 appreciate it.

6 THE COURT: Have a good day, all. Thank you.

7 (Matter concluded)

8 -o0o-

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 6th day of September, 2012.

  
Linda Ferrara

CET\*\*D 656  
Transcriptions Plus II, Inc.